

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Valentina Concha-Toro	Team: Squad #15	CCRB Case #: 201904510	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/03/2019 7:45 PM	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 10/3/2020	EO SOL 5/20/2021	
Date/Time CV Reported Fri, 05/24/2019 9:39 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 05/24/2019 9:39 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Terrance Durity	16005	960486	075 PCT
2. POF Mecca Levy	06793	964612	075 PCT
3. SGT Kimberley Bove	01998	931555	075 PCT
4. POF Kristen Perkins	07214	951044	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Terrance Durity	Force: Police Officer Terrance Durity used physical force against § 87(2)(b)	§ 87(2)(g), § 87(4-b)
B.SGT Kimberley Bove	Abuse: Sergeant Kimberley Bove entered § 87(2)(b) 1st Floor, Brooklyn.	§ 87(2)(g), § 87(4-b)
C.SGT Kimberley Bove	Abuse: Sergeant Kimberley Bove searched § 87(2)(b) 1st Floor, Brooklyn.	§ 87(2)(g), § 87(4-b)
D.SGT Kimberley Bove	Abuse: Sergeant Kimberley Bove forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)

Case Summary

On May 24, 2019, § 87(2)(b) submitted this complaint with the CCRB over the telephone.

At approximately 7:52 p.m. on April 3, 2019, § 87(2)(b) was in his apartment at § 87(2)(b), Brooklyn. § 87(2)(b) knocked on the door of § 87(2)(b) because he and his neighbors had been previously involved in a dispute. His female neighbor answered the door and § 87(2)(b) told her he was afraid of someone possibly arriving at his apartment with a firearm. The female neighbor told § 87(2)(b) “What? Gun? I’m going to call the police.” Both § 87(2)(b) and his neighbor called 9-1-1. § 87(2)(b) was standing outside on the sidewalk facing the buildings with his back against the street parked vehicles. Sgt. Kimberley Bove and PO Terrance Durity from the 75th Precinct responded. PO Durity approached § 87(2)(b) stood in front of him, and § 87(2)(b) took a step forward. PO Durity placed one hand in the middle of § 87(2)(b)’s chest and pushed him backward against the vehicles (**Allegation A: Force**, § 87(2)(g)). Sgt. Bove approached § 87(2)(b) and told him that his neighbor stated he threatened her with a firearm. Sgt. Bove entered § 87(2)(b)’s apartment, exited and told § 87(2)(b) that she had searched for a firearm (**Allegations B and C: Abuse of Authority**, § 87(2)(g)). Sgt. Bove told § 87(2)(b) that he was going to be removed to the hospital (**Allegation D: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) entered his apartment, escorted by PO Durity, and lock his computer and gathered his belongings. § 87(2)(b) was placed in handcuffs and walked to the ambulance. PO Durity accompanied § 87(2)(b) to § 87(2)(b). No arrests were made or summonses issued during the incident.

§ 87(2)(g), § 87(4-b)

Five body-worn camera videos were obtained during the investigation (Board Reviews 01, 03, and 24)

Findings and Recommendations

Allegation (A) Force: Police Officer Terrance Durity used physical force against § 87(2)(b).

It is undisputed that upon arriving on scene, PO Durity and his partner, PO Mecca Levy, approached § 87(2)(b) outside of his apartment. § 87(2)(b) told PO Durity that there had been a dispute with his neighbor. § 87(2)(g)

In the EVENTS Information (Board Review 11) it was noted that the neighbor stated § 87(2)(b) was banging on her door, was outside of her apartment, and being aggressive toward her. § 87(2)(b) stated that his neighbor had knocked on his door and was harassing him. § 87(2)(b) threatened his neighbor with a firearm.

The Resource Recap Log (Board Review 14) noted that there were multiple 9-1-1 calls made to the incident location. One call was marked as a harassment in progress and the other was marked as a dispute with a firearm inside.

§ 87(2)(b) stated in his CCRB statement (Board Review 04) that as PO Durity, PO Levy and Sgt. Bove's partner approached § 87(2)(b) he leaned his back against the vehicles. § 87(2)(b) explained in a follow up telephone interview (Board Review 05) that PO Durity stood directly in front of § 87(2)(b) approximately three feet away. PO Levy and Sgt. Bove's partner stood on either side of PO Durity. § 87(2)(b) took a step toward PO Durity and was approximately one to two feet away from him. PO Durity placed one hand in the middle of § 87(2)(b)'s chest and gave one push so that § 87(2)(b)'s back fell against the vehicle. § 87(2)(b) described the push as a four to five on a scale of one to ten. § 87(2)(b) was not injured.

PO Durity in his CCRB testimony (Board Review 06) stated he did not recall the job received over the radio had any detail regarding a firearm. PO Durity spoke to § 87(2)(b) outside and § 87(2)(b) was not doing anything with his body. § 87(2)(b) told PO Durity that he had been involved in a dispute with his neighbors. PO Durity did not recall § 87(2)(b) or anyone else on scene inform him of an incident with a firearm. PO Durity was not physically threatened by § 87(2)(b). PO Durity did not recall § 87(2)(b) taking a step toward him. PO Durity did not recall placing a hand on § 87(2)(b)'s chest and pushing him backward toward the vehicles. PO Durity did not recall that any officer on scene pushed § 87(2)(b) against a vehicle. PO Durity denied using any physical force against § 87(2)(b) other than the minimum needed to handcuff him prior to placing him in the ambulance.

Sgt. Bove, PO Levy and Sgt. Bove's partner, PO Kristen Perkins, stated (Board Reviews 07, 08, and 09) that they did not recall § 87(2)(b) taking a step toward PO Durity. Sgt. Bove, PO Levy and PO Perkins, did not recall PO Durity or any other officer on scene, placing a hand on § 87(2)(b)'s chest and pushing him.

None of the BWC videos obtained by the investigation captured this moment of the incident.

§ 87(2)(g)

According to NYPD Patrol Guide, Section 221-01 (Board Review 10), an officer may use force when reasonable to ensure the safety of a member of service or a third person.

§ 87(2)(g)

§ 87(2)(g)

Allegation (B) Abuse of Authority: Sergeant Kimberley Bove entered § 87(2)(b), Brooklyn.

Allegation (C) Abuse of Authority: Sergeant Kimberley Bove searched § 87(2)(b), Brooklyn.

It is undisputed that Sgt. Bove was the only supervisor on scene during this incident § 87(2)(g) and the neighbor called 9-1-1 at approximately the same time. The EVENT Information (Board Review 11) noted that the neighbor stated that § 87(2)(b) was in possession of a firearm. Sgt. Bove, PO Durity, PO Levy and PO Perkins responded to the location. § 87(2)(b) was outside of his apartment as officers arrived. § 87(2)(b) requested to be allowed in his apartment because he wanted to secure personal items. PO Durity and PO Levy escorted § 87(2)(b) into his apartment. § 87(2)(g)

§ 87(2)(b) stated (Board Review 04) that the door to his apartment was closed but not locked. Sgt. Bove told § 87(2)(b) that his neighbor had informed her § 87(2)(b) threatened her with a firearm. § 87(2)(b) did not recall whether Sgt. Bove asked § 87(2)(b) to enter his apartment. Sgt. Bove walked into § 87(2)(b)'s apartment, but § 87(2)(b) did not observe where in the apartment Sgt. Bove was. After approximately 10 to 15 minutes, Sgt. Bove exited the apartment and told § 87(2)(b) that she had searched his apartment for a firearm but did not inform him where she had searched.

PO Levy stated (Board Review 08) that she did not recall being provided any information regarding a firearm during the incident or in the radio run. Sgt. Bove announced out loud that she was going to look in the apartment to “make sure everything [was] okay.” PO Levy did not recall whether Sgt. Bove had a conversation with § 87(2)(b) about entering and whether Sgt. Bove asked for consent. § 87(2)(b) told Sgt. Bove where his apartment was and that the door was unlocked. Sgt. Bove and PO Perkins entered the apartment and searched for any weapons. After an unknown period of time, Sgt. Bove and PO Perkins exited the apartment. No weapons were recovered. PO Levy did not know why Sgt. Bove thought there were any weapons in the apartment but believed Sgt. Bove searched for the safety of PO Durity and PO Levy.

Sgt. Bove, PO Durity and PO Perkins stated (Board Review 06, 07 and 08) that they did not recall being provided any information regarding a firearm during the incident or in the radio run. Sgt. Bove, PO Durity and PO Perkins did not recall Sgt. Bove and PO Perkins entering or searching § 87(2)(b)'s apartment prior to § 87(2)(b) entering with PO Durity and PO Levy. Sgt. Bove denied she entered or searched § 87(2)(b)'s apartment.

PO Perkins' BWC video (Board Review 24) captured a male officer enter the front building door of § 87(2)(b) twice. The second time the male officer entered the front door, Sgt. Bove approached the door, looked in, and walked back to where PO Perkins was speaking to a female individual.

Sgt. Bove's BWC video (Board Review 24) captured Sgt. Bove walk to the front building door of § 87(2)(b). Sgt. Bove looked through the open door which lead to a hallway and there was a staircase. The male officer was not in the hallway and it was not captured where he had gone.

§ 87(2)(g)

§ 87(2)(g)

According to People v. Ponto, 103 A.D.2d 573 (Board Review 12), a third party's allegation of a threat with a firearm is not sufficient for an officer to enter the accused party's home. In this case, the accused was standing outside of the home upon the arrival of officers and under the officers' control. The court held that there was no danger regarding the destruction of evidence in the apartment at the time. No consent from the individual was obtained and neither was a warrant. There were no other exigencies compelling an instantaneous officer response, and thus a warrantless entry and seizure were improper.

According to People v. McBride, 14 N.Y.3d 440 (Board Review 13), there are six factors to determine exigency: "(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause ... to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry."

§ 87(2)(g)

§ 87(2)(g)

Allegation (D) Abuse of Authority: Sergeant Kimberley Bove forcibly removed § 87(2)(b) to the hospital.

It is undisputed that EMS was called to the incident location for an EDP and § 87(2)(b) was removed to the hospital. § 87(2)(g)

§ 87(2)(b) stated (Board Review 04) that he had been crying during the incident. After Sgt. Bove entered § 87(2)(b)'s apartment and told him that she had searched it, she told § 87(2)(b) that he was not well because he was crying, and he was going to be taken to the hospital. § 87(2)(b) told Sgt. Bove that he did not want to go to the hospital, and she told him that he did not have a choice. Sgt. Bove did not use her radio.

Sgt. Bove, PO Levy, and PO Perkins stated (Board Reviews 07, 08 and 09) that they smelled alcohol emanating from § 87(2)(b). PO Durity stated (Board Review 06) that there was an odor of marijuana emanating from § 87(2)(b). When standing outside and speaking to Sgt. Bove, PO Durity, PO Levy, and PO Perkins, § 87(2)(b)'s behavior was erratic. § 87(2)(b) was speaking

with them one minute and then would begin yelling and crying. Sgt. Bove, PO Durity, PO Levy, and PO Perkins had difficulty understanding § 87(2)(b) because his behavior was changing rapidly, and he was unable to focus on speaking with the officers present. Neither Sgt. Bove, PO Durity, PO Levy, nor PO Perkins recalled any information regarding a weapon. § 87(2)(b)'s neighbor informed the officers on scene that § 87(2)(b) had been harassing her.

Sgt. Bove stated (Board Review 07) that she believed that § 87(2)(b)'s behavior was indicative that he had taken medication. Sgt. Bove made the determination to call EMS because § 87(2)(b) needed to be evaluated. EMS does not evaluate an individual on scene and they do not make the ultimate decision to remove an individual to the hospital, police officers make the decision when they call for EMS.

PO Durity stated (Board Review 06) that he and the other officers on scene asked § 87(2)(b) if he wanted to go to the hospital and § 87(2)(b) said he would. Sgt. Bove made the ultimate decision to remove § 87(2)(b) to the hospital.

In the EVENTS Information (Board Review 11) it was noted that the neighbor stated § 87(2)(b) was banging on her door, was outside of her apartment, and being aggressive toward her. § 87(2)(b) stated that his neighbor had knocked on his door and was harassing him. § 87(2)(b) threatened his neighbor with a firearm.

The Resource Recap Log (Board Review 14) marked the call made by § 87(2)(b) as a "10-39 H1- other crimes (in progress): harassment/inside" and the call from his neighbor as a "10-52 F1- Dispute: firearm/inside."

Sgt. Bove's BWC video (Board Review 24) captured one of the neighbors informing PO Perkins and Sgt. Bove that § 87(2)(b) had recently moved into an apartment below her. The female neighbor told PO Perkins and Sgt. Bove that she had not had any issue with § 87(2)(b) until three weeks prior to the incident. Since then § 87(2)(b) began sending her odd text messages, harassing her, banging on her door multiple times, and had use offensive language against her in front of her children. The female individual informed PO Perkins and Sgt. Bove that on the date of incident, § 87(2)(b) was banging on her door and screaming at her. When she answered her door § 87(2)(b) walked away and began knocking on the other neighbors' door. The female individual told PO Perkins and Sgt. Bove § 87(2)(b) was "mentally unstable."

Medical documents from § 87(2)(b) noted that § 87(2)(b) was intoxicated. At the hospital § 87(2)(b) presented with anxiety, but had linear thoughts, alert, clear speech, logical and was coherent.

§ 87(2)(g)

According to NYPD Patrol Guide, Section 221-13 (Board Review 15), an individual is to be taken into protective custody when an officer reasonably believes that a person who is apparently mentally ill or emotionally disturbed is conducting themselves in a manner likely to result in serious injury to themselves or others.

§ 87(2)(g)

§ 87(2)(g) [Redacted text block]

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§ 87(2)(g), § 87(4-b) [Redacted text block]

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§ 87(2)(g), § 87(4-b)

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Civilian and Officer CCRB Histories

CCRB Case # 201904510

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Mediation, Civil and Criminal Histories

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Investigator: Valentina Concha-Toro
Signature Print Title & Name Date
April 2, 2020

Squad Leader: Simon Wang IM Simon Wang April 3, 2020
Signature Print Title & Name Date

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____